

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Norfolk Division

BRIAN FARABEE,

Petitioner,

v.

ACTION NO. 2:15cv256

SUPERINTENDENT MEHERRIN RIVER  
REGIONAL JAIL,

VIRGINIA DEPARTMENT OF CORRECTION, and

COMMISSIONER OF THE DBHDS,

Respondents.

FINAL ORDER

Before the Court is a Petition for a Writ of Habeas Corpus filed pursuant to 28 U.S.C. § 2254 and the Respondent's Motion to Dismiss the Petition. In his Petition, the pro se Petitioner alleges violations of his constitutional rights pertaining to the lawfulness of his probation violation hearing.

The Petition was referred to a United States Magistrate Judge for report and recommendation pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C) and Local Civil Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia. The Magistrate Judge's Report and Recommendation, filed June 26, 2016, recommends dismissal of the Petition with prejudice as to the Superintendent of Meherrin River Regional Jail and the Commissioner of the Department of

Behavioral Health and Developmental Services, and without prejudice as to the Virginia Department of Corrections. On July 14, 2016, the Petitioner timely filed objections to the Report and Recommendation. The Respondent did not respond to the Petitioner's objections and the time to do so expired. However, by Order of September 6, 2016, the Court ordered Respondent to file a response. Respondent filed a response on September 19, 2016.

The Court, having reviewed the record and examined the objections filed by Petitioner to the Report and Recommendation, and the response filed by Respondent, and having made de novo findings with respect to the portions objected to, does hereby **ADOPT** and **APPROVE** the findings and recommendations set forth in the Report and Recommendation filed June 24, 2016. It is, therefore, ORDERED that the Respondent's Motion to Dismiss, ECF No. 10, be **GRANTED**, and that the Petition, ECF No. 1, be **DENIED** and **DISMISSED WITH PREJUDICE**. It is further ORDERED that judgment be entered in favor of the Respondent.

The Petitioner may appeal from the judgment entered pursuant to this Final Order by filing a written notice of appeal with the Clerk of this court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510, within thirty (30) days from the date of entry of such judgment.

The Petitioner has failed to demonstrate a substantial showing of the denial of a constitutional right, and therefore, the Court declines to issue any certificate of appealability pursuant to Rule 22(b) of the Federal Rules of Appellate Procedure. See Miller-El v. Cockrell, 537 U.S. 322, 335-36 (2003).

The Clerk shall forward a copy of this Final Order to Petitioner and to counsel of record for the Respondent.

It is so ORDERED.

/s/ MSD  
**Mark S. Davis  
United States District Judge**

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**MARK S. DAVIS  
UNITED STATES DISTRICT JUDGE**

September 29, 2016